

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Olas Carayannis	Team: APU	CCRB Case #: 201407229	<input checked="" type="checkbox"/> Force <input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> Discourt. <input type="checkbox"/> O.L.	<input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 07/17/2014 3:30 PM	Location of Incident: 202 Bay Street		Precinct: 120	18 Mo. SOL 1/17/2016	EO SOL 1/17/2016
Date/Time CV Reported Fri, 07/18/2014 12:28 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 07/18/2014 12:28 PM		

Complainant/Victim	Type	Home Address

[illegible]

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Pantaleo	13293	942805	120 PCT
2. POM Justin Damico	00173	948847	120 PCT
3. SGT Dhanan Saminath	04270	935678	120 PCT
4. LT Christophe Bannon	00000	921137	120 DET

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Mark Ramos	28611	931909	PBSI TF
2. POM Craig Furlani	20152	928330	PBSI TF
3. SGT Kizzy Adonis	2263	929653	120 PCT
4. POM Frank Verrico	10790	947577	120 PCT
5. POM William Meems	02992	944802	120 PCT
6. POM Christopher Maldonado	00950	928684	120 PCT
7. POM Vincent Aguilo	00382	934374	120 DET

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Pantaleo	Discourtesy: PO Daniel Pantaleo spoke discourteously to § 87(2)(b)	
B.POM Justin Damico	Discourtesy: PO Justin Damico spoke discourteously to § 87(2)(b)	
C.POM Daniel Pantaleo	Abuse: PO Daniel Pantaleo threatened to issue a summons to § 87(2)(b)	
D.POM Daniel Pantaleo	Force: PO Daniel Pantaleo used a chokehold against § 87(2)(b)	
E.POM Daniel Pantaleo	Force: PO Daniel Pantaleo restricted § 87(2)(b)'s breathing.	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

On July 18, 2014, § 87(2)(b) filed the following complaint on behalf of § 87(2)(b) witnessed the incident. Additionally, on July 18, 2014 and thereafter, The Daily News and numerous other news outlets published articles and videos of this incident. This case was therefore placed on the sensitive case list.

On July 14, 2015, this case was reassigned from Assistant Supervising Investigator Alexander Schiavo to Investigator Leanne Fornelli. On December 2, 2015, this case was reassigned from Investigator Fornelli to Investigative Manager Nicholas Carayannis.

This case is being closed more than 18 months after the incident due to a Staten Island DA Hold and a hold placed by the US Attorney's Eastern District of New York.

This case has video evidence, SnagIt copies of which have been placed below. Please note that the full videos can be found at Board Review 21 and Board Review 22, and the transcriptions of these videos can be found at Board Review 08 and Board Review 09:

Video One:



201407229_20151223_1642_DM.mp4

Video Two:



201407229_20151223_1641_DM.mp4

Background

Lieutenant Christopher Bannon (Board Review 28) was assigned as the Special Operations Lieutenant for the 120th Precinct in 2014. He had been the Special Operations Lieutenant for two years before this incident. In March of 2014, Lieutenant Bannon first learned that there was a quality of life condition of selling loose cigarettes in front of 200 Bay Street in Staten Island. He learned about the selling of loose cigarettes at a CompStat meeting. The meeting leader instructed Lieutenant Bannon to focus enforcement on the quality of life condition of selling loose cigarettes at 200 Bay Street. During the CompStat meeting, Lieutenant Bannon was shown a video of individuals selling loose cigarettes in front of 200 Bay Street. § 87(2)(b) was not mentioned in that meeting, and at the time of the meeting, Lieutenant Bannon did not know of § 87(2)(b).

There were two individuals known for selling cigarettes in the vicinity of 200 Bay Street: § 87(2)(b) and an unidentified light-skinned male. Lieutenant Bannon learned of the unidentified male during the March 2014 CompStat meeting. After that meeting, Lieutenant Bannon would change the tour of a conditions unit to work from 11:00 a.m. to 8:00 p.m. to address the sale of untaxed cigarettes in the area. Also, the anti-crime team would, at times, be instructed to focus on the location. On March 28, 2014, Lieutenant Bannon first became aware of § 87(2)(b) when he was arrested for the sale of untaxed cigarettes at 200 Bay Street. Lieutenant Bannon could not recall who arrested § 87(2)(b) and Lieutenant Bannon did not see § 87(2)(b). He was only aware of him by name. In addition to his March arrest, on May 7, 2014, § 87(2)(b) was arrested for the sale of untaxed cigarettes at the northeast corner of Victory Boulevard and Saint Marks Place in Staten Island (approximately one-half of a block away from 200 Bay Street). Lieutenant Bannon was aware of both arrests.

PO Justin Damico (Board Review 24) was the graffiti officer for the command. He had no partners, and his direct supervisor was Lieutenant Bannon. His duties included cleaning graffiti off of walls and addressing specific conditions in the 120th Precinct such as the sale of untaxed

cigarettes. On occasion, PO Damico was assigned to work with the anti-crime team when they were short an officer. PO Damico worked with PO Daniel Pantaleo (Board Review 23) on one occasion prior to the incident. While Lieutenant Bannon was PO Damico's direct supervisor, it was not uncommon for Lieutenant Bannon to instruct Sgt. Dhanan Saminath (Board Reviews 30-32), the anti-crime sergeant, to instruct PO Damico to perform assignments.

The NYPD typically combines graffiti statistics with other quality of life statistics, so whenever quality of life conditions arose, Lieutenant Bannon assigned PO Damico to address them. PO Damico was familiar with 200 Bay Street because it was a location with several complaints about the sale of untaxed cigarettes. PO Damico was aware of an arrest (which did not involve § 87(2)(b)) that happened three weeks prior in front of 200 Bay Street for the sale of untaxed cigarettes. PO Damico was familiar with § 87(2)(b) and he knew his name. Two weeks prior to July 17, 2014, PO Damico approached § 87(2)(b) near 202 Bay Street at a check cashing store for selling cigarettes. PO Damico requested to see § 87(2)(b)'s identification, and § 87(2)(b) became irate. He asked § 87(2)(b) not to sell the untaxed cigarettes at this location and to go somewhere else. § 87(2)(b) was also in a book that was maintained by the Special Operations division of the 120th Precinct as a known seller of untaxed cigarettes. § 87(2)(b)'s photograph was in the book.

Summary Prior to Video Evidence

On July 17, 2014, Lieutenant Bannon was in the 120th Precinct's special operations building. This is a separate building from the stationhouse. It houses the anti-crime team, the ICO and the assistant ICO, PO Damico, and Lieutenant Bannon. Lieutenant Bannon had a borough-wide meeting to go to on July 17, 2014 in the 122nd Precinct. Lieutenant Bannon drove himself to the borough-wide meeting. Across the park which splits Bay Street, he observed approximately six men "huddled" in front of 200 Bay Street. LT Bannon believed that the six men were selling loose cigarettes at the time. Lieutenant Bannon was not familiar with any of the individuals he observed, and he had not seen any of the six men in the video that was shown during CompStat in March.

At the same time, PO Damico was in the special operations building. PO Pantaleo had been assigned to the anti-crime team under the supervision of Sgt. Saminath, and he was partnered with PO Tiffany Reyes. PO Reyes and PO Pantaleo had arrested two individuals for possession of a knife of greater than four inches. PO Reyes processed the arrest. Sgt. Saminath sent a text to Lieutenant Bannon regarding this arrest, which is reproduced below (Board Review 33):

Thu, Jul 17, 1:53 PM

Sgt. Saminath:

I brought in § 87(2)(b) on a bullshit greater than 4 inches knife.

Lieutenant Bannon:

Good job...

While PO Reyes processed the arrest, PO Pantaleo ate his meal in the special operations office. Lieutenant Bannon called Sgt. Saminath to have PO Damico and an anti-crime officer go to 200 Bay Street to deal with the condition and to verify that the males were actually selling loose cigarettes. He told Sgt. Saminath to send the officers to determine if they could arrest the "cigarette guy." Lieutenant Bannon did not mention § 87(2)(b) by name. Lieutenant Bannon was not referring to any one particular person as there were two male individuals who were known to sell cigarettes there. Lieutenant Bannon assumed that Sgt. Saminath and PO Damico would know that by "the cigarette guy" he meant § 87(2)(b) or the other known cigarette seller.

Sgt. Saminath did not know § 87(2)(b)'s name prior to the incident, and he was not familiar with § 87(2)(b) prior to the incident.

Lieutenant Bannon wanted the condition addressed at this time because he had “let it go” for about a month (the last time there was an arrest for selling loose cigarettes), and it seemed to be an on-going condition. Lieutenant Bannon denied that his motivation for making this call was to tell the Special Operations meeting that he had an arrest for this very condition. Sgt. Saminath did not know why Lieutenant Bannon called him with those specific instructions at that time, but he knew that Lieutenant Bannon had to “answer up” for the quality of life violations in the command. The call did not sound particularly urgent. Approximately one month prior, Lieutenant Bannon had called Sgt. Saminath and had given him the same directive. At no other time had Lieutenant Bannon given him this directive.

Sgt. Saminath informed PO Damico that he was to address the untaxed cigarette condition with PO Pantaleo. Sgt. Saminath chose PO Pantaleo for the assignment because PO Pantaleo's partner was processing an arrest. PO Pantaleo was still eating his meal, and Sgt. Saminath instructed him to go with PO Damico when he finished. PO Damico interpreted Lieutenant Bannon's instruction to survey the area to mean that he was to make an arrest if he observed illegal activity.

Meanwhile, video evidence from a Social Security Office across the street from 200 Bay Street shows § 87(2)(b) crossing Bay Street. He crosses the street in front of traffic and he is sweating.

Sgt. Luke Gasquez, the IAB investigator assigned to the case, estimated that PO Pantaleo and PO Damico arrived at the corner of St. Marks Street and Victory Boulevard at around 3:14 p.m. and that they observed § 87(2)(b) for approximately 10 minutes. PO Damico and PO Pantaleo did not speak to each other about the assignment. The only conversation that they had was about what was on the radio. They did not smoke cigarettes in the car, and they did not use their cellphones. PO Damico did not hear PO Pantaleo complain about the assignment. PO Damico and PO Pantaleo were sitting at the corner of St. Marks Street and Victory Boulevard, which is approximately one-half block away from 200 Bay Street. PO Damico watched § 87(2)(b) pull a cigarette out of his left pants cargo pocket and hand it to one of the men that were standing near § 87(2)(b). PO Damico could not recall if the purchaser smoked the cigarette there or not. PO Damico believed that it was illegal to buy cigarettes below cost, but he had never made an arrest for that. PO Damico was using only his eyes and did not have any binoculars or other objects to enhance his vision. PO Pantaleo could not see § 87(2)(b) and the males because there was a double parked vehicle blocking his vision. PO Damico did not tell PO Pantaleo that he recognized § 87(2)(b).

PO Pantaleo pulled the police vehicle one-half block closer to § 87(2)(b) without the lights and sirens on. PO Damico observed § 87(2)(b) exchange another cigarette with another man in exchange for currency. PO Damico did not lose sight of § 87(2)(b) during the drive. PO Damico and PO Pantaleo attempted to park the vehicle on Bay Street near § 87(2)(b). However, the street was narrow and there were several vehicles parked at an angle on the street. PO Pantaleo could not stop the vehicle so that it would not block traffic, so he decided to pull the police vehicle around the block. He drove from 202 Bay Street to Hannah Street where he took a right. He then turned right onto Van Duzer Street and he turned another right into the KFC/Taco Bell parking lot and cut through. As soon as they returned to the block that § 87(2)(b) was on, the two purchasers of cigarettes walked away. PO Damico did not know where they went. PO Pantaleo stopped his vehicle within a few feet of § 87(2)(b). He stopped the vehicle on the right side of the road, closer to § 87(2)(b). PO Pantaleo and PO Damico exited the police vehicle at the same time, and they both shut the doors. PO Damico planned on arresting § 87(2)(b). PO Pantaleo and PO Damico did not discuss in advance of exiting the vehicle how they were going to

arrest § 87(2)(b) PO Damico had his shield around his neck and displayed. § 87(2)(b) was standing in front of the Beauty Supply store.

In the video, civilians make reference to a fight that occurred and claim that § 87(2)(b) had intervened in the fight, preventing it from escalating. PO Pantaleo and PO Damico did not observe this, however, according to their statements they had to drive in a circle around the block. Sgt. Gasquez, the IAB investigator, informed the CCRB that IAB drove the above described route and that the time that it took them to make it through the stop lights and back to the location was sufficient for the officers to have not witnessed the alleged fight.

Prior to the video, PO Damico, PO Pantaleo, and § 87(2)(b) were together for approximately five minutes. In that time, PO Damico told § 87(2)(b) to place his hands behind his back, and he reached toward § 87(2)(b)'s left wrist. § 87(2)(b) slapped PO Damico's right forearm away with an open palm. § 87(2)(b) was very upset, which he expressed by throwing up his hands and speaking at an elevated volume. PO Pantaleo and PO Damico were standing on either side of § 87(2)(b). PO Damico and PO Pantaleo did not have any conversation or non-verbal gestures as to what to do next. PO Damico attempted to grab § 87(2)(b)'s wrist one more time, and § 87(2)(b) pulled his wrist away.

§ 87(2)(b) and § 87(2)(b) (see Video One and Video Two attached above and Board Review 21 and 22) were in the vicinity of 200 Bay Street at the time. § 87(2)(b) is depicted in the video telling § 87(2)(b) to call IAB. § 87(2)(b) alleged that PO Pantaleo and PO Damico told her to "get the fuck out of here" and "move the fuck away." This was not captured in § 87(2)(b)'s video (**Allegations A and B**).

The handcuffing of § 87(2)(b)

§ 87(2)(b)'s handcuffing was caught on film by § 87(2)(b) who was filming on his cellphone.

PO Damico and PO Pantaleo stood next to § 87(2)(b). § 87(2)(b) while he was filming, told PO Damico and PO Pantaleo that § 87(2)(b) just broke up a fight. § 87(2)(b) stood in the middle of the sidewalk and PO Pantaleo told him to get off the sidewalk or he would get a summons for riding his bike on the sidewalk (**Allegation C**). PO Damico told § 87(2)(b) that he observed him sell cigarettes to an individual. § 87(2)(b) denied having sold cigarettes to anyone, and he became increasingly agitated by this allegation. This exchange lasted about four minutes. At one point, PO Damico asked § 87(2)(b) if he was going to do this the easy way or the hard way. § 87(2)(b) responded, "Easy way or hard way for what? Every time you see me, you want to mess with me. I'm tired of it. This stops today. It's done." PO Damico explained during his IAB interview that the easy way was putting his hands behind his back, and the hard way was calling additional units.

PO Damico attempted to grab § 87(2)(b)'s hand. § 87(2)(b) pulled his hand away from PO Damico. PO Damico nodded his head at PO Pantaleo. PO Pantaleo took this to mean that PO Damico wanted him to call for additional units, which PO Pantaleo did. This was not a pre-established signal. While they waited for additional units, PO Pantaleo did not talk to § 87(2)(b). A crowd began to form around § 87(2)(b) and the officers, and PO Pantaleo watched the crowd. The crowd was yelling at PO Pantaleo, but PO Pantaleo was not listening to the words they were saying.

PO Damico grabbed for something in his back pocket. PO Damico explained in his IAB interview that it was his pepper spray. PO Damico further explained that he was intending to arrest § 87(2)(b) and that by this point, § 87(2)(b) had escalated enough that PO Damico believed that § 87(2)(b) was going to fight. PO Damico believed that § 87(2)(b)'s size would make him difficult to arrest if he was fighting. PO Damico grabbed his pepper spray with all of those facts in mind, but he decided against using his pepper spray because if any spray-back

occurred, he and PO Pantaleo would be at a disadvantage. PO Damico has not personally had that experience, but he learned about it in training, and other officers have also told him of the risk.

PO Pantaleo was carrying his pepper spray and his expandable baton at the time. PO Pantaleo did not attempt to employ his pepper spray because he did not think it would be effective, and he did not want the back spray to hurt his eyes or PO Damico. PO Pantaleo did not attempt to use his expandable baton because he believed that it would not have been effective. § 87(2)(b) was so irate that PO Pantaleo believed that hitting him with the expandable baton would have made him more irate.

When PO Pantaleo observed back-up arrive, PO Damico attempted for a third time to handcuff § 87(2)(b). Simultaneously, PO Pantaleo moved forward to assist in this process. According to PO Pantaleo, PO Damico grabbed one arm and PO Pantaleo grabbed the other. According to PO Damico, he did not indicate in any way to PO Pantaleo to move in at that moment. PO Damico heard the sirens, which can be heard in the video, coming closer. He agreed with PO Pantaleo that this was the proper time to start effecting the arrest because he knew that the additional units had arrived. When PO Pantaleo attempted to pull § 87(2)(b)'s arm behind his back, § 87(2)(b) pulled his arm out of his grasp.

PO Pantaleo stood behind § 87(2)(b) and wrapped his right arm under § 87(2)(b)'s right armpit. Simultaneously, PO Pantaleo placed his left arm around the left side and front of § 87(2)(b)'s neck (**Allegations D and E**). PO Pantaleo described this as a takedown maneuver he had learned in the NYPD Academy's plainclothes training. PO Pantaleo pulled § 87(2)(b) to the right until PO Pantaleo's back hit the glass storefront with § 87(2)(b)'s back against the front of PO Pantaleo's body. § 87(2)(b)'s knees buckled and hit the ground. At first, PO Pantaleo's hands were not connected, but after approximately nine seconds into the struggle, PO Pantaleo brought his right arm from beneath § 87(2)(b)'s armpit, and his right hand grasped his left hand. While his right hand grasped his left hand, his left arm was across § 87(2)(b)'s neck. PO Pantaleo kept his left forearm around § 87(2)(b)'s throat throughout all of these movements. PO Pantaleo, who was still on top of § 87(2)(b), forced him onto his stomach. PO Pantaleo was holding § 87(2)(b) and lying on him to prevent him from getting back up onto his hands and knees or biting PO Pantaleo. While PO Pantaleo was holding § 87(2)(b) with his left arm over § 87(2)(b)'s throat, PO Damico was attempting to handcuff § 87(2)(b). PO Damico could not hear § 87(2)(b) say, at the time, that he could not breathe. PO Pantaleo heard § 87(2)(b) say he could not breathe after he removed his arm from his neck area. The video depicts § 87(2)(b) stating that he could not breathe approximately ten times. PO Pantaleo heard PO Damico say, "We got him." PO Pantaleo was able to untangle his feet, pull himself forward, and pivot his body in front of § 87(2)(b).

During this struggle, PO Craig Furlani and PO Mark Ramos arrived. PO William Meems (Board Review 29) arrived shortly thereafter with Sgt. Kizzy Adonis. PO Damico had worked with PO Ramos in the past. PO Pantaleo held § 87(2)(b)'s head down to the ground to prevent him from biting PO Pantaleo and to secure his head as there were so many other officers present they could accidentally kick or hit his head. PO Damico handcuffed one of § 87(2)(b)'s hands with one pair of handcuffs, one of the uniform officers handcuffed the second hand with a different pair, and PO Pantaleo's handcuffs were used as a third pair, which PO Damico applied. § 87(2)(b) required three pairs of handcuffs due to his size. PO Pantaleo did not assist any further in the handcuffing. PO Meems did not assist in the handcuffing. He stood near § 87(2)(b)'s head just in case the officers needed his assistance. From this point forward, § 87(2)(b) appears in the video to be unresponsive.

After the handcuffing of § 87(2)(b)

After § 87(2)(b) was handcuffed, PO Pantaleo stood up and assisted with crowd control. PO Damico and other officers attempted to pick § 87(2)(b) up, but § 87(2)(b) was limp. No one told PO Damico and the other officers to pick § 87(2)(b) up. PO Damico believed that § 87(2)(b) was “playing possum,” or lying limp on purpose to resist arrest passively. PO Meems, who was trained through the NYPD’s ESU EMTs school and is state certified as an EMT, also believed that § 87(2)(b) was passively resisting at this point.

Sgt. Saminath, who was on anti-crime patrol at the time that PO Pantaleo put over the call for assistance, was the passenger in an unmarked vehicle with PO Vincent Aguilo. By the time Sgt. Saminath arrived, the struggle was over, and § 87(2)(b) was lying on the sidewalk with handcuffs on.

§ 87(2)(b)’s eyes were open and PO Meems believed that he was conscious, but PO Meems wanted to check § 87(2)(b) out medically because he had heard § 87(2)(b) saying that he could not breathe during the struggle. PO Meems decided to place § 87(2)(b) on his side because lying on one’s side is the best position for someone who is unresponsive. PO Meems asked § 87(2)(b) questions, but § 87(2)(b) did not respond. PO Meems determined that § 87(2)(b) had shallow breathing by watching his chest rise and fall. PO Meems also took § 87(2)(b)’s pulse. § 87(2)(b) had a pulse at that time. PO Meems turned § 87(2)(b) on his side. PO Meems believed that § 87(2)(b) needed an ambulance at this point and he said as much. Independent of PO Meems’s statement that § 87(2)(b) needed an ambulance, Sgt. Saminath called the dispatcher for an ambulance. PO Meems did not render any further aid to § 87(2)(b) at that time as he did not have any equipment. PO Meems spoke with § 87(2)(b) and told him to breathe in and out. § 87(2)(b)’s eyes were open and he did not respond to these questions or move.

Sgt. Saminath asked PO Pantaleo what happened. PO Pantaleo informed Sgt. Saminath that he and PO Damico saw § 87(2)(b) selling cigarettes. Sgt. Saminath did not ask PO Pantaleo to whom § 87(2)(b) was selling cigarettes, and Sgt. Saminath did not know to whom § 87(2)(b) was selling cigarettes. Sgt. Saminath did not follow-up that night to determine to whom he sold cigarettes. PO Pantaleo told Sgt. Saminath that he called for additional units because § 87(2)(b) was resisting. PO Pantaleo informed Sgt. Saminath that he put his arm under § 87(2)(b)’s armpit, grabbed his shirt, and pulled him to the ground.

Sgt. Saminath asked PO Pantaleo if he could use his cellphone to call the dispatcher because he left his cellphone in the vehicle. Sgt. Saminath called the dispatcher, as opposed to calling over the radio, as the radio kept breaking up and they could not hear each other clearly. Sgt. Saminath requested an ambulance again. Sgt. Saminath believed that § 87(2)(b) needed an ambulance because of the way he was lying. § 87(2)(b) was breathing and his eyes were moving, but Sgt. Saminath did not check his vitals in any way. Sgt. Saminath did not touch § 87(2)(b). Sgt. Saminath observed § 87(2)(b)’s chest moving up and down slightly.

It took the ambulance approximately three minutes to arrive. Sgt. Saminath only spoke with PO Pantaleo at the time. PO Pantaleo kept repeating that he observed § 87(2)(b) sell a loose cigarette, that he called for additional officers because § 87(2)(b) was resisting, and that he placed his arm under § 87(2)(b)’s armpit, grabbed his shirt, and pulled him to the ground.

When EMS arrived, PO Meems told § 87(2)(b) to answer their questions. A female EMT began to speak to § 87(2)(b) but he did not respond to her in any way. The female EMT told PO Meems that § 87(2)(b) had a pulse. The EMTs and the officers present lifted § 87(2)(b) onto a stretcher.

§ 87(2)(b)’s property was removed from him. One cellphone and one pack of cigarettes were given to PO Damico by another officer. PO Damico also removed packs of cigarettes with

Virginia tax stamps from § 87(2)(b)'s left cargo pocket. PO Damico followed § 87(2)(b) to the ambulance because he was the arresting officer. § 87(2)(b) was placed in the rear of the ambulance and an oxygen mask was placed on him.

After § 87(2)(b) was removed in an ambulance

Sgt. Adonis was due to be at the same borough-wide meeting that Lieutenant Bannon was attending. PO Meems and Sgt. Adonis left to go to that meeting.

Soon after the ambulance with § 87(2)(b) inside moved, PO Damico removed § 87(2)(b) handcuffs so that the EMTs could take his vitals. The EMTs attempted to use the Automated External Defibrillator (hereafter "AED"), but the AED read, "No shock." The EMTs began doing CPR.

Sgt. Saminath instructed PO Pantaleo to follow behind the ambulance in a police vehicle. Sgt. Saminath left with PO Aguilo and went to the stationhouse. When he arrived at the stationhouse, Sgt. Saminath received a call from PO Pantaleo requesting that Sgt. Saminath return to the scene because EMS were still at the location with § 87(2)(b) and there was a crowd gathering. When he returned, there was a crowd near the ambulance. The crowd was yelling, but not hitting the ambulance or doing anything additional to show their displeasure. When Sgt. Saminath arrived on the second time, all of the uniform officers had left the area. Sgt. Saminath, PO Aguila, PO Pantaleo, and PO Damico were the only officers present.

Sgt. Saminath was not certain how many EMTs were at the location. One of the female EMTs informed Sgt. Saminath that § 87(2)(b)'s condition was not good. PO Damico returned to the ambulance. Sgt. Saminath was not certain if § 87(2)(b) was still handcuffed at this time. After approximately five minutes the ambulance left with PO Damico. PO Pantaleo followed behind the ambulance in his vehicle, and Sgt. Saminath followed the ambulance to Richmond University Medical Center ("RUMC").

Sgt. Saminath asked PO Pantaleo and PO Damico for § 87(2)(b)'s name. He could not recall who provided his name. Sgt. Saminath had a text exchange at this point with Lieutenant Bannon regarding the incident, which is reproduced here verbatim (Board Review 33):

Thu, Jul 17, 4:11 PM

Sgt. Saminath:

Danny n Justin went to collar § 87(2)(b) n he resisted. While they were trying to gain control of him he went into cardiac arrest n is unresponsive @ this time.

Sgt. Saminath:

Might be doa

Lieutenant Bannon:

For the smokes?

Sgt. Saminath:

Yea... They observed him selling n when they stopped him he didn't comply with them. Danny then tried grabbed him n they both fell down. They called the bus ASAP. He's most likely doa. I'm just waiting for them to pronounce him. He has no pulse.

Sgt. Saminath:

They had to put over n 85

Lieutenant Bannon:

Ok, keep me posted, I'm still here.

Lieutenant Bannon:

Not a big deal, we were effecting a lawf arrest
§ 87(2)(b) was pronounced dead on arrival at § 87(2)(b) at 4:34 p.m.

After § 87(2)(b) was pronounced dead

At around 5:00 p.m., Lieutenant Bannon went to 200 Bay Street. § 87(2)(b) and the officers were not at the location when he arrived. At this point, Lieutenant Bannon had learned that § 87(2)(b) was in critical condition, but not that he had died. Lieutenant Bannon could not recall who told him that he was in critical condition. Several people were saying that § 87(2)(b) had Chronic Obstructive Pulmonary Disease (COPD) or a heart condition and that he was not “in good shape.” The commanding officer was at the location and he asked for Lieutenant Bannon to respond so that he could see the location himself.

Later that night, at approximately 6:30 p.m., Lieutenant Bannon saw PO Pantaleo at the desk of the 120th Precinct stationhouse. Lieutenant Bannon asked PO Pantaleo what had happened and PO Pantaleo stated that they had grabbed § 87(2)(b) to arrest him, that § 87(2)(b) had resisted, and that they took him down. Lieutenant Bannon did not speak with Sgt. Saminath or PO Damico after that point.

At 10:25 p.m., Sgt. Saminath was interviewed by IAB. Sgt. Saminath provided a brief (approximately 10 minutes 30 seconds) interview to IAB. Sgt. Saminath was interviewed again by IAB at a later date. On the morning of July 18, 2014, The Daily News published the aforementioned video filmed by § 87(2)(b) (Board Review 21). Prior to the publication of the video, IAB only interviewed Sgt. Saminath. IAB did not interview any other officer until after the video was made public.

Dr. Floriana Persechino (Board Review 18, Board Review 27), from the Office of the Chief Medical Examiner (OCME), performed an autopsy on § 87(2)(b). Dr. Persechino has done the autopsies for approximately 20 cases involving strangulation. When Dr. Persechino finished the autopsy and the autopsy report, she circulated it to at least four top physicians in OCME and they concurred with her findings.

Dr. Persechino received three videos from IAB and/or the Richmond County DA's Office prior to initiating the autopsy. She reviewed Argus footage of § 87(2)(b) walking across a street prior to his interaction with officers on July 17, 2014. There was nothing unusual in § 87(2)(b)'s gait or breathing. § 87(2)(b) appeared to be in his typical state of health. Dr. Persechino also observed video footage taken by § 87(2)(b) and § 87(2)(b) of § 87(2)(b)'s interaction with PO Pantaleo and PO Damico prior to performing the autopsy.

Peticule hemmorages were found on § 87(2)(b)'s face. Peticule hemmorages, while consistent with strangulation, could be attributable to other causes depending on the case, but in this instance were likely caused by the compression to § 87(2)(b)'s neck.

Dr. Persechino explained that there were no external injuries to § 87(2)(b)'s neck. Bruising on the external layers occurs when a thin, hard object is used to compress the neck (e.g. a nylon rope). In this case, a broad soft object, an arm, was used to compress the neck. The internal examination of the neck was done layer by layer. The neck is composed of several muscles and it extends from the base of the jaw bone to the top of the sternum. From the first layer of muscle to the last, there was a "patterned" band of bruising across each of the muscles on the neck. Dr. Persechino explained that this pattern of bruising could only come from the compression of the neck and it could not have been due to resuscitation. The deep structural bruising of the muscles in the neck required a significant amount of pressure. Dr. Persechino could not estimate the pounds per square inch pressure applied to the anterior side of § 87(2)(b)'s throat, but she noted it was significant. The esophagus is positioned behind the trachea. § 87(2)(b)'s esophagus was also bruised. The hyoid bone, which is positioned at the base of the tongue, was not fractured at

the time of his death. Dr. Persechino sent the hyoid bone to the lab, which required her to fracture it at the time of the autopsy. Hyoid bones are broken in approximately one-quarter of strangulation cases and the lack of a fracture to this bone is not indicative that strangulation did not occur.

Dr. Persechino defined "chokehold" as a medico-legal term referring to the application of an arm across the anterior of the neck. She referenced Spitz and Fischer's Medicolegal Examination of Death, which states the following (Board Review 25):

The use of choke hold or bar arm control is being discouraged, because of its potential for injury of the airway. In this form of restraint a forearm is placed across the front of the neck, while the other hand pulls the forearm back, causing compression of the airway...This elicits air hunger. The victim of a choke hold becomes agitated, fearful of his life and combative due to his inability to breathe. Choke holds can cause serious damage and death within seconds...Death is usually the result of asphyxiation and petechial hemorrhages may be found in the eyes and on the face...Injury of the skin as a result of choke hold is usually absent, except if a police baton or large metal flashlight was used across the neck.

The patterned band of bruising across § 87(2)(b)'s neck, alongside the video of PO Pantaleo placing his arm across § 87(2)(b)'s neck, led her to rule the cause of § 87(2)(b)'s death a chokehold. Additionally, § 87(2)(b) was in a prone position after the chokehold and the compression to his chest was an additional cause in his death.

In addition to the chokehold, § 87(2)(b) had an acute asthma attack. The asthma attack was triggered by the chokehold and the stress of the encounter. Dr. Persechino did not believe, after viewing the video, that § 87(2)(b) was having an asthma attack prior to PO Pantaleo placing his arm across his throat.

Dr. Persechino also listed in the report all visible injuries. § 87(2)(b) had several small abrasions around his body that were fresh wounds and were concurrent with his time of death. From viewing the video, Dr. Persechino believed that these abrasions came from when § 87(2)(b) was on the ground during his arrest.

Cause of death is Dr. Persechino's opinion based on the entirety of the medico-legal evidence she gathered. Cause of death is the physical event that set in motion a series of events that led to the death of the individual. Dr. Persechino explained that many medical factors can contribute to the death of an individual, including medical history. That § 87(2)(b) had a history of asthma, obesity, and hypertension contributed to his death. However, none of these factors would have been in play had pressure not been applied to his neck, which then set off the chain reaction that led to § 87(2)(b)'s death. The manner of death, homicide, means that the cause of death, compression of neck, was initiated by another person.

Mediation, Civil, and Criminal Histories

- This case was not "suitable" for mediation.
- On September 14, 2014, the estate of § 87(2)(b) filed a Notice of Claim with the City of New York claiming wrongful death, pre-death pain and suffering, conscious pain and suffering, assault, intentional infliction of emotional distress, negligent hiring, negligent training, negligent supervision, negligent retention and hiring, interference with family relationship, violation of civil rights, loss of services, society, affection, consortium, and companionship, and wrongful imprisonment (Board Review 14).
- § 87(2)(b)

§ 87(2)(b)
[REDACTED]

- § 87(2)(b)
[REDACTED]
- § 87(2)(b)
[REDACTED]
- According to the Office of Court Administration (OCA), as of April 13, 2017, § 87(2)(b) [REDACTED] has no history of criminal convictions in New York City (Board Review 34).

Civilian and Officer CCRB History

- This is the only complaint to which § 87(2)(b) [REDACTED] has been a party (Board Review 03).
- § 87(2)(b) [REDACTED] was a complainant/victim in one other CCRB case: § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED] was named as a witness in one other CCRB case: § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED] was a party to four other CCRB cases: § 87(2)(b) [REDACTED]
- PO Pantaleo has been a member of service for nine years. He has been a subject of 18 CCRB allegations in eight complaints. In 201116562, the Board substantiated an allegation of a vehicle stop and search against PO Pantaleo and the NYPD imposed instructions. In 201208174, the Board substantiated an allegation of a stop and a frisk and recommended charges. The NYPD found PO Pantaleo not guilty of the stop allegation and guilty of the frisk allegation with a penalty of two days of vacation. One allegation of refusal to obtain medical treatment was unsubstantiated against PO Pantaleo in 2009. In 201108018, the complainant alleged that PO Pantaleo and another officer had struck his head against the holding cell wall and kicked and punched him in the holding cell area causing a laceration that required stitches and staples. The complainant's attorney refused to allow the complainant to provide an in-person statement and the complaint was closed as complainant uncooperative. In

201301769, the complainant alleged that PO Pantaleo pushed him onto a discarded mattress on the street and punched his jaw. This allegation was closed as unsubstantiated. 201209018 and 201209334 involved allegations of a vehicle stop and search, which were all unsubstantiated.

- PO Damico has been a member of service for five years. He has been a subject of three CCRB allegations in one prior case. In 201310359, the Board substantiated an allegation of refusal to provide name and shield against him and the NYPD imposed instructions. In the same case, the Board exonerated an allegation of PO Damico pointing his firearm and the board unsubstantiated a discourtesy allegation.
- Sgt. Samithath has been a member of service for 12 years. He has been a subject in two CCRB cases with three allegations pled against him. In 201308743, a force allegation was exonerated against him and a stop allegation was substantiated, but the NYPD declined to prosecute the case. In 201408712, an allegation that he threw a radio at an individual (force) was unsubstantiated against him.
- Lieutenant Bannon has been a member of service for 18 years. He has been a subject in three CCRB cases with six allegations pled against him. In 200102026, a threat of force allegation was unsubstantiated against him. In 200105229, a force allegation was exonerated against him. In 201303000, an allegation that he pointed his firearm at an individual was exonerated, an allegation that he use force and offensive language (race) was unsubstantiated against him, § 87(4-b), § 87(2)(g)
- PO Frank Verrico has been a member of service for eight years and has been a subject of five CCRB complaints with six allegations plead against him. Two of these complaints were mediated or mediation attempted, one was truncated as complaint withdrawn, one was closed as exonerated, and one was closed as unsubstantiated. § 87(2)(g)

Findings and Recommendations

Allegations not pleaded

§ 87(2)(b) was arrested for evading the cigarette tax and in the video he denied selling cigarettes. This is an arrest dispute, and thus no stop allegations were pleaded against PO Pantaleo and PO Damico.

Allegation A—Discourtesy: PO Daniel Pantaleo spoke discourteously to § 87(2)(b)

Allegation B—Discourtesy: PO Justin Damico spoke discourteously to § 87(2)(b)

§ 87(2)(b) (Board Review 04) alleged that PO Pantaleo and PO Damico said to her to “get the fuck out of here” and “move the fuck away.” The video evidence does not depict this. None of the other witnesses recalled hearing any officer say this to § 87(2)(b) § 87(2)(g)

Allegation C—Abuse of Authority: PO Daniel Pantaleo threatened to issue a summons to § 87(2)(b)

In the video (see video link labeled “Video One” in the case summary, or see Board Review 21 for the full video and Board Review 08 and Board Review 09 for full transcriptions), PO Pantaleo can be heard telling § 87(2)(b) to get off the sidewalk or he will get a summons for riding his bike on the sidewalk. § 87(2)(b) then drops something off camera and says he is not riding anything on the sidewalk. Later in the video, a bicycle is depicted in the middle of the sidewalk.

NY ADC 19-176 (Board Review 20) states that individuals are not permitted to ride their bicycle on the sidewalk. Doing so can result in the issuance of a summons.

§ 87(2)(g)

Allegation D—Force: PO Daniel Pantaleo used a chokehold against § 87(2)(b)

Allegation E—Force: PO Daniel Pantaleo restricted § 87(2)(b)'s breathing.

The video (see video link labeled “Video Two” in the case summary, or see Board Review 21 for the full video and Board Review 08 and Board Review 09 for full transcriptions) of the incident depicts the following: PO Pantaleo stands behind § 87(2)(b) and wraps his right arm under § 87(2)(b)'s right armpit. Simultaneously, PO Pantaleo places his left arm around the left side and front of § 87(2)(b)'s neck. PO Pantaleo continues pulling § 87(2)(b) to the right until PO Pantaleo's back hits the glass storefront with § 87(2)(b)'s back against the front of PO Pantaleo's body. § 87(2)(b)'s knees buckle and hit the ground. At first PO Pantaleo's hands are not connected, but after approximately nine seconds into the struggle, PO Pantaleo brings his right arm from beneath § 87(2)(b)'s armpit and his right hand grasps his left hand. While his right hand grasps his left hand, his left arm is across § 87(2)(b)'s neck. PO Pantaleo, who is still on top of § 87(2)(b) forces him onto his stomach. PO Pantaleo keeps his left forearm around § 87(2)(b)'s throat throughout all of these movements. PO Furlani and PO Ramos enter the frame and tell § 87(2)(b) “Let me get your hands, buddy.” § 87(2)(b) repeats approximately 10 times, “I can't breathe.” PO Pantaleo gets up and removes his forearm from around § 87(2)(b)'s throat. PO Pantaleo places both of his hands on § 87(2)(b)'s head and holds it against the sidewalk. The video evidence depicts that from this point forward, § 87(2)(b) is unresponsive.

§ 87(2)(b) was pronounced dead at 4:34 p.m. at § 87(2)(b). On July 18, 2015, The Office of the Chief Medical Examiner performed the autopsy of § 87(2)(b). The autopsy found that the cause of § 87(2)(b)'s death was “compression of neck (chokehold), compression of chest and prone positioning during physical restraint by police” and the manner of his death was “homicide” (see Board Review 18, privileged documents).

PO Pantaleo was interviewed by IAB on December 8, 2014 (Board Review 23). He stated that prior to the video, PO Damico attempted to grab § 87(2)(b)'s wrist twice. The first time, § 87(2)(b) slapped PO Damico's hand away with an open palm. The second time, § 87(2)(b) pulled his wrist away. PO Pantaleo called for additional units. When PO Pantaleo observed the additional units arrive, PO Damico attempted for a third time to handcuff § 87(2)(b). Simultaneously, PO Pantaleo moved forward to assist in this process. PO Damico grabbed § 87(2)(b)'s left arm and PO Pantaleo grabbed § 87(2)(b)'s right arm. When PO Pantaleo attempted to pull § 87(2)(b)'s arm behind his back, § 87(2)(b) pulled his arm out of PO Pantaleo's grasp. At that point, PO Pantaleo attempted to use a takedown maneuver to take § 87(2)(b) to the ground. PO Pantaleo placed his right arm beneath § 87(2)(b)'s right armpit and his left arm over his chest. PO Pantaleo attempted to pull his weight to one side and take his legs out from under him causing him to fall down. PO Pantaleo learned this takedown maneuver during the NYPD Academy's plainclothes training. § 87(2)(b) was taller than PO Pantaleo, and at one point PO Pantaleo's feet came off the ground while he was on § 87(2)(b)'s back. The takedown maneuver described above was not entirely effective as PO Pantaleo and § 87(2)(b) fell into a plate glass window. At that point, PO Pantaleo removed his hand from beneath § 87(2)(b).

§ 87(2)(b)'s armpit to brace himself against the window. He continued to hold on to § 87(2)(b) with his other arm.

PO Pantaleo stated that he was carrying his pepper spray at the time and his expandable baton. PO Pantaleo did not attempt to employ his pepper spray because he did not think it would be effective, and he did not want the back spray to hurt his eyes or PO Damico. PO Pantaleo did not attempt to use his expandable baton because he believed that it would not have been effective. § 87(2)(b) was so irate that PO Pantaleo believed that hitting him with the expandable baton would have made him more irate.

PO Pantaleo stated that his arm ended up around § 87(2)(b)'s neck. PO Pantaleo was familiar with the NYPD policy on chokeholds. PO Pantaleo understood this policy to be that officers were not to use chokeholds. PO Pantaleo did not believe that the Patrol Guide defines a chokehold. PO Pantaleo's understanding of the definition of a chokehold is the use of two hands around the throat of the individual, or placing the forearm around the windpipe of an individual and using the other hand to pull back on that forearm to restrict someone's breathing.

PO Pantaleo viewed the video of the incident during his interview with IAB. He maintained that he did not use a chokehold, though he acknowledged that his left arm was around § 87(2)(b)'s throat and his right arm was clasping his left arm.

PO Pantaleo stated that after he pushed off the window, while he was on § 87(2)(b)'s back, § 87(2)(b) fell to the ground and then lifted himself to be on his hands and knees. PO Pantaleo was able to push § 87(2)(b) forward, but this action caused PO Pantaleo to land with his feet up in the air. PO Pantaleo still had one arm around § 87(2)(b)'s "upper area." PO Pantaleo clarified that his arm was around § 87(2)(b)'s throat, but his throat was in the crook of PO Pantaleo's elbow. There was no pressure being applied to § 87(2)(b)'s throat at the time. PO Pantaleo was holding § 87(2)(b) and lying on him to prevent him from getting back up onto his hands and knees. § 87(2)(b) stated that he could not breathe after PO Pantaleo had released his grip on him. PO Pantaleo did not hear § 87(2)(b) speak again, but he did hear him wheezing and breathing.

PO Damico was interviewed by IAB on December 5, 2014 (Board Review 24). PO Damico stated that he did not see PO Pantaleo with his arm around § 87(2)(b)'s neck area during the incident as he was focused on handcuffing § 87(2)(b). In the interview, PO Damico stated that he did not hear § 87(2)(b) state that he could not breathe.

Patrol Guide Procedure 203-11, which was in effect on July 17, 2014, stated, "Members of the New York City Police Department will NOT use chokeholds. A chokehold shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air. Whenever it becomes necessary to take a violent or resisting subject into custody, responding officers should utilize appropriate tactics in a coordinated effort to overcome resistance." (Board Review 01, emphasis in the original)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

[REDACTED]

§ 87(4-b), § 87(2)(g)

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§ 87(4-b), § 87(2)(g)

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Squad:12

Squad Leader:	_____	<u>IM Nicholas Carayannis</u>	<u>August 24, 2017</u>
	Signature	Title/Print	Date

Reviewer:	_____	_____	_____
	Signature	Title/Print	Date